

Appl. No. : 10/017,341
Filed : December 13, 2001

REMARKS

By this amendment, applicant has canceled claims 1-9, amended claim 10 and added new Claims 15-19. Claims 1-6 and 8 are canceled for being drawn to a non-elected species and thus for reason unrelated to patentability. Claim 7 is canceled in order to protect the preferred embodiment and thus for reason unrelated to patentability. Support for the amendment to Claim 10 can be found throughout the specification, for example page 6, lines 4-8. Support for new Claims 15-19 can be found throughout the specification, for example in the original claims and page 6, lines 4-8.

I Regarding 35 U.S.C. 102(b) and U.S.C. 103(a) rejection over Ryan

The Office has rejected Claim 7 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ryan (5,830,217).

35 U.S.C. 102 states:

“A person shall be entitled to a patent unless-

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.”

35 U.S.C. 103(a) states:

“(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

Claim 7 has been cancelled. Therefore the rejection is mute.

II Claims are Non-Obvious

The Office has rejected Claims 10-14 under 35 U.S.C. 103(a) as being unpatentable over Khosravi et al. (5,441,515) in view of Ryan (5,830,217).

MPEP 2143 states:

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“To establish a prima facie case of obviousness... the prior art reference (or references when combined) must teach or suggest all the claim limitations.”

Khosravi describes a stent wherein “a plurality of strips or stent rings 380 are formed from a sheet of material, with the stent rings 380 are formed from a sheet of material...The stent rings are formed by passing ends 390 through slots 395, whereupon the stent is formed into a cylindrical shape having a plurality of stent rings joined at tab portion 400” (column 10, line 2-8). Examiner has asserted that stent rings 380 are equivalent to radial elements in the instant application. Thus Khosravi is describing “radial elements” which overlap with themselves and which form a continuous ring, defining the complete circumference of the stent.

Claim 10, as amended, is drawn to a stent with the limitation “wherein no radial element overlaps with itself in the second expanded diameter”. This limitation is not described in Khosravi, and Ryan does not teach how to modify Khosravi to obtain a stent wherein no radial element overlaps itself in the second expanded diameter.

Additionally, new Claim 15 contains the limitation “wherein each radial element is structurally discrete from the other radial elements in the series and forms only a fraction of the circumference of the tubular member”. This limitation is not described in Khosravi, and Ryan does not teach how to modify Khosravi to obtain a stent wherein each radial element is structurally discrete from the other radial elements in the series and forms only a fraction of the circumference of the tubular member.

Therefore, Khosravi and Ryan in combination do not teach all the limitations of independent Claim 10, and the dependent Claims 11-14, Applicant respectfully requests withdrawal of the 35 U.S.C. 103(a) rejection of Claims 10-14.

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CONCLUSION

For the reasons stated above, Applicant respectfully submits that this application is in condition for allowance and such action is respectfully requested. If any issues remain or require further clarification the Examiner is respectfully requested to call the undersigned at the number listed below in order to resolve such issues promptly. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 12-22-04

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AMEND
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